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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,408	11/19/2003	Mark Meister	1353.1003C	5313

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EXAMINER

LIM, KRISNA

ART UNIT	PAPER NUMBER
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2153

DATE MAILED: 05/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/715,408

Applicant(s)

MEISTER ET AL.

Examiner

Krisna Lim

Art Unit

2153

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 May 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-13.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☒ Other: _____.


**KRISNA LIM
PRIMARY EXAMINER**

Continuation of 11. does NOT place the application in condition for allowance because: the applicant's arguments are not persuasive. See attachment explanation.

Art Unit: 2153

Applicant's arguments filed 5/2/05 have been fully considered but they are not persuasive. In the remark, the applicant argues that:

a) Paragraphs 10 and 11 of the present invention where it is stated that a virus can compose and send e-mail without a user being aware of the transmission of such unauthorized e-mail. A virus is defined as ... a computer program ...

b) A virus is clearly something that is not the user. A message created by a virus is a mail message not created by the user.

c) An unauthorized agent can be a virus, , a Trojan horse and an agent other than an owner of a mail client source of the message.

d) A Trojan horse is also clearly something that is not the user. A message created by a Trojan horse is a mail message not created by the user.

1. In reply to paragraphs a) to d) above, paragraphs 10 and 11 are the background and a related prior art section. The detailed description of the present invention starts at paragraph 24 to paragraph 38 which discloses nothing about a virus composes and sends e-mail without a user being aware of the transmission. In fact, the detailed description of the present invention at paragraph 31 on the contrary discloses that the user is the one who creates the message. Now, the question is what is the definition of a user or an unauthorized agent. At one point the applicant argued that a virus, a computer program, is something that is not a user while on the other hand the applicant argued that an unauthorized agent can be a virus. Again, the question that

Art Unit: 2153

should be asked what are the differences between the term user and an unauthorized agent. Aren't both a user and an unauthorized agent a human being or are they something else? Yes, the message created by a virus is a message not created by a user if and only if the user is defined as a human being, not a computer program. However, the term user is not exclusively used for just a human being because the user can be a program, a process, etc. Moreover, the claimed language says nothing about a virus created e-mail message. In addition, not all e-mail messages not created by a user are e-mail message created by the virus as alleged by the applicant. In conclusion, the present invention does not even mention that the user does not create the electronic mail message while in fact it is the other way around.



KRISNA LIM
PRIMARY EXAMINER